

EXHIBIT 98

Marlyn Elizabeth McGrath - June 18, 2015
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION

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STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

vs.

Civil Action No.
1:14-cv-14176

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (HARVARD CORPORATION); and
THE HONORABLE AND REVEREND THE
BOARD OF OVERSEERS,

Defendants.

-----x

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DEPOSITION OF MARLYN ELIZABETH

McGRATH, a witness called by the Plaintiff,
taken pursuant to the applicable provisions of
the Federal Rules of Civil Procedure, before
James A. Scally, RMR, CRR, a Notary Public in
and for the Commonwealth of Massachusetts, at
the offices of WilmerHale, 60 State Street,
Boston, Massachusetts, on Thursday, June 18,
2015, commencing at 9:00 a.m.

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1 those complaints?

2 A. Oh, I can.

3 Q. Okay. What can you tell me about the ones you
4 remember?

5 A. They get sent -- they're typically -- the ones I'm
6 describing typically are addressed to the president. You
7 know, typically it's "My grandniece didn't get in" or a
8 particular person was not admitted, "and, by the way, you
9 know, she fell victim to such-and-such a policy."

10 We are not unfamiliar in our office with
11 complaints about decisions, which can be couched in, you
12 know -- in many different terms. And those that get to the
13 president are like those.

14 Q. And when we're talking about these three or four a
15 month sometimes clustered around the admissions process --

16 A. Right. Right.

17 Q. -- your answer is it's three or four a month that
18 specifically raise the issue of Harvard's use of race in
19 the admissions process?

20 A. Yes.

21 Q. Do you remember if any of those complaints have
22 included complaints by Asian-Americans who felt they were
23 discriminated in the admissions process?

24 A. You know, I don't remember whether it was by

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1 Asian-Americans themselves to the president's office.

2 We -- in our -- I'm not certain that the ones that I've
3 seen from the president have come from Asian-Americans.

4 Q. What about complaints received directly by someone
5 in your office?

6 A. Yes.

7 Q. How often do you recall seeing those types of
8 complaints?

9 A. How often do I recall seeing them.

10 Q. Or being made aware of them.

11 MR. WOLFSON: Objection.

12 Go ahead.

13 A. This year, which is the year I can remember the
14 best, probably four or five.

15 Q. Were those four or five complaints before or after
16 the filing of this litigation?

17 A. In this process, so mostly -- I mean in this
18 cycle. So since.

19 Q. Since the filing of this litigation.

20 A. Uh-huh.

21 Q. Is there anything specific you remember about
22 those complaints?

23 A. I actually don't remember anything specific, and I
24 don't remember where they came from. We do answer all our

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1 mail, and people regularly complain about not being
2 admitted. And they, as I said a minute ago, have various
3 arguments to make about that. And so it's hard for me to
4 remember or distinguish one from another.

5 Q. What kind of a response do you give -- answer do
6 you give when you receive those types of complaints?

7 A. We explain that the process is holistic and
8 complex, and we have many fine applicants, and we have a
9 committee process that can choose only a few.

10 Q. Is there standard language that's used to respond
11 to any of those types of complaints?

12 A. We do guide our staff in standard language,
13 various versions of which seem -- whichever one seems most
14 appropriate to what's being asked for.

15 Q. So is there -- is there a sample letter or
16 language that's maintained electronically?

17 A. Yes. We have sample letters that we have shared
18 with them.

19 Q. Do you recall receiving any of those complaints
20 from other faculty members?

21 MR. WOLFSON: Objection.

22 A. I don't remember receiving complaints from faculty
23 members, except general complaints about "Can you tell me
24 why you didn't take Mary Smith, who I wrote you a letter

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1 MR. STRAWBRIDGE: This is a good
2 stopping point for me.

3 MR. WOLFSON: Sure. Okay.

4 MR. STRAWBRIDGE: We can take lunch
5 right now. Thank you so much.

6 THE WITNESS: You're welcome.

7 (Recess: 12:35 p.m. to 1:17 p.m.)

8 BY MR. STRAWBRIDGE:

9 Q. Okay. Good afternoon --

10 A. Good afternoon.

11 Q. -- Ms. McGrath.

12 When an applicant fills out the Common Application
13 or the Universal College Application, they have the
14 opportunity to indicate their race or ethnic background?

15 A. They do.

16 Q. Okay. And do you know what categories they are
17 presented to select?

18 A. I always have to remind myself. It's a drop-down
19 menu, as I understand it.

20 Q. Let me make sure that's actually on the --

21 MR. STRAWBRIDGE: I'm going to ask
22 the court reporter to mark this as Exhibit
23 No. 2. I ask the court reporter to mark
24 this as Exhibit 2 and this as Exhibit 3.

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1 (Exhibit 2, Universal College
2 Application five-year admissions
3 application, marked.)

4 (Exhibit 3, The Common Application
5 first-year application, marked.)

6 Q. Starting with Exhibit No. 2, Ms. McGrath, which is
7 the Universal College Application, I think if you turn to
8 the second page at the very top --

9 A. Yes.

10 Q. -- that's the section that includes ethnicity?

11 A. Yes.

12 Q. And it asks two questions; correct?

13 A. Yes.

14 Q. The first is whether you are Hispanic or Latino?

15 A. Right.

16 Q. And the second says, "How would you describe your
17 racial background?" And then it lists "Asian," "Black or
18 African-American," "American Indian or Alaskan Native,"
19 "Native Hawaiian or Other Pacific islander" or "White"; is
20 that accurate?

21 A. Yes.

22 Q. And with respect to the Common Application, which
23 is Exhibit No. 3, under the "Demographics" section on page
24 1 --

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1 A. Yes.

2 Q. -- the right column, it again -- well, not again,
3 but it also asks, "Are you Hispanic/Latino?" And then it
4 says, "Regardless of your answer to the prior question,
5 please indicate how you identify yourself." And, again, it
6 gives the option "American Indian or Alaskan Native,"
7 "Asian (including Indian subcontinent and Philippines),"
8 "Black or African-American (including Africa and
9 Caribbean)," "Native Hawaiian or Other Pacific Islander,
10 (Original Peoples)," or "White (including Middle Eastern)";
11 is that accurate?

12 A. Yes.

13 Q. When -- you mentioned earlier that when Harvard
14 receives information from standardized testing services, it
15 records information regarding ethnic identities of
16 potential targets, or it collects information, I suppose,
17 of ethnic identities and potential targets for recruitment;
18 correct?

19 A. The testing agency?

20 Q. The testing agency collects them and provides them
21 to Harvard?

22 A. Yes.

23 Q. And does Harvard enter that information into its
24 database?

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1 A. Yes.

2 Q. Okay. Does Harvard also enter into its database
3 the indications that applicants make with respect to their
4 race or ethnic identity under the questions we just
5 reviewed --

6 A. Yes.

7 Q. -- on the common applications?

8 A. Yes.

9 Q. And do you know what -- are the categories that
10 are listed on the Common Application and the Universal
11 College Application the categories Harvard uses in its
12 database?

13 A. These are, yes.

14 Q. Okay. Do you have -- are there any other race or
15 ethnic category, categories, that are not included on these
16 applications that Harvard tracks on its database?

17 A. We sometimes see "Other." And I think that in
18 some of our reporting, that may be "White," but I'm not
19 sure. That's not a question I can answer with confidence.

20 Q. Okay. Do you know whether or not Harvard ever
21 receives conflicting information from the standardized test
22 services and the actual applications received about a
23 particular recruitment target's racial identification?

24 A. I understand that we do.

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1 Q. And what does it do to resolve that conflict, if
2 anything?

3 A. We don't really resolve the conflict. The
4 question -- we don't really resolve the conflict.

5 Q. Okay. So what does it do when it gets either
6 conflicting or additional information?

7 A. For the database for applications, the one that is
8 the -- the racial preference choice associated with that
9 candidate is whatever he or she indicates at the time that
10 she applied on the application, Universal or Common
11 Application. I understand that we retain in our database
12 all information pertaining to ethnicity, but we don't
13 attempt to reconcile it.

14 Q. So the information that Harvard would use going
15 forward for its own reporting purposes would be the
16 information reported on the equivalent of Exhibits [2](#) and [3](#)?

17 A. Yes.

18 Q. What does Harvard do if an applicant does not
19 indicate an ethnicity on either of these applications?

20 MR. WOLFSON: Objection.

21 Go ahead.

22 A. We don't necessarily do anything.

23 Q. Does Harvard make any attempt to ascertain the
24 race of an applicant through other parts of its

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1 application?

2 A. We do not with that purpose in mind.

3 Q. Okay. But with any purpose in mind, does Harvard
4 make an attempt to identify the race of an applicant who is
5 not --

6 A. We don't make an attempt to, no.

7 Q. What is reported on the universal applications is
8 what Harvard maintains in its database, and there's never
9 an attempt to supplement or add additional information for
10 people who do not check the box?

11 MR. WOLFSON: Objection.

12 Go ahead.

13 A. What I would say to that is that we often learn
14 from other sources, in other places or from other sources
15 in the application, more about the family's background,
16 which may include ethnicity. The student may write to us,
17 write an essay on the topic, and that may be information
18 that was lacking.

19 Q. And if that -- if Harvard learns that information
20 from other materials that the student has submitted, does
21 it record that information in its database?

22 A. Not -- we don't correct or change that designation
23 that the student gave us.

24 Q. I understand. But would there be an additional

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1 A. The reporter to the -- the registrar is, I
2 believe, the transmitter of -- of those data to the
3 government, and I'm not certain, but that's what I think is
4 true, that the reason I couldn't tell you for certain was
5 that if it's the registrar, I can't tell you what other
6 sources they may have.

7 Q. Does your office provide its database to the
8 registrar's office?

9 A. Yes. We provide the -- we provide to the
10 registrar's office at the time that we're conveying the --
11 conveying the student to freshman status, we provide the
12 registrar's office and the freshman dean's office with the
13 data that we have concerning the applicants who are about
14 to enroll.

15 Q. That would occur at the time that the applicant
16 has accepted Harvard's invitation to enroll?

17 A. Yes. After the applicant is accepted.

18 Q. What does Harvard do -- strike that.

19 In a situation where the applicant does not self-
20 identify on one of the universal applications but Harvard
21 learns through other materials submitted of the applicant's
22 race or ethnic background, what does Harvard do with that
23 information?

24 A. We -- we bear it in mind. We do not change the

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1 record as -- we do not change the student's designation. I
2 guess you asked that before.

3 Q. May it be noted in the summary sheets?

4 A. It may well be.

5 Q. Is that information important to Harvard's
6 analysis of applications?

7 MR. WOLFSON: Objection.

8 A. And the answer is that it depends on the case.

9 Q. Is there any training manual or written policy
10 regarding the use of an applicant's materials to identify
11 that applicant's race when the applicant has not self-
12 identified?

13 A. Not to my knowledge.

14 Q. Can you say with confidence that none of your
15 admissions officers have ever taken steps to identify the
16 race of an applicant who did not self-identify on one of
17 the universal applications?

18 MR. WOLFSON: Objection.

19 A. And I cannot say that with confidence.

20 Q. Are you aware of any occasion at all in which an
21 officer may have taken steps to identify the race of an
22 applicant who did not self-identify?

23 A. Taken steps for that particular purpose, I'm not
24 aware of any such -- such steps.

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1 turn up in the athletic column. For many of the rest of
2 us, it would turn up in the extracurricular column. Again,
3 it's a question of the judgment of the reader.

4 But generally speaking, that's -- athletic is
5 construed by the person reading it, and we have some
6 guidelines, again, about what would be a 3, what would be a
7 3 plus, perhaps, what would be a 2. And we know what a 1
8 is and we know what a 4 is.

9 Q. And then the last category was personal.

10 A. Uh-huh.

11 Q. Can you give me an example of what goes in the
12 personal column?

13 A. Yes. That can have various elements. If the
14 student in writing about himself or herself presents a very
15 appealing personal picture, and that can mean -- appealing
16 can be a wide variety of appeal, you know, a sensitive
17 writer, a person with humor, a person who seems very
18 outward directed, and that's appealing, and if that or some
19 other attractive personal elements are echoed or
20 supplemented, reinforced by the other materials in the
21 folder, typically the SSR, the secondary school report, the
22 counselor letter, who may give us -- which may give us a
23 good deal of information or may not about the candidate's
24 personal style, personal affect, relationships to other

1 people, that could help, and so can the teacher letters.

2 And when we have an interview, that can help us too.

3 Q. Would a person's race or ethnic identity be
4 included in one of the appealing factors that would weigh
5 into the personal category?

6 A. That should not be part of it.

7 Q. Does race or ethnic background play into any of
8 these categorical areas?

9 A. Does it play into any of them?

10 Q. Yes. I mean is it considered in assessing the
11 score in any of these areas?

12 A. I don't -- it's not supposed to. It is supposed
13 to be what each of those aspects would be compared to other
14 applicants in general whom you've read.

15 Q. You say it's not supposed to. Are you aware of
16 occasions when it has been included in one of these
17 categories?

18 A. No.

19 Q. We discussed -- strike that.

20 On the personal category, is the essay a large
21 driver of where that score is going to come from?

22 A. Well, it could be. It may be, but only if it
23 echoes or reinforces things that we have from other
24 credible sources.

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1 Q. Would overcoming difficulty socioeconomic
2 circumstances be something that could be accounted for in
3 the personal category?

4 A. Yes. Yes, it could be.

5 Q. Would navigating a new culture be something that
6 could be accounted for in the personal category?

7 A. Yes.

8 Q. If someone's ethnic identity played a factor into
9 their development as a person because of where they grew up
10 or where they moved to or something like that, could that
11 play into the personal category?

12 A. Yes.

13 Q. If someone's status as an immigrant to this
14 country or the children of the immigrants, could that play
15 into the personal category?

16 A. Yes, if it was a successful managing of that
17 circumstance.

18 Q. These categories, we talked a little bit about
19 athletics, but let's just start with academic. What
20 influences the numeric score that's given to a person on
21 their academic profile?

22 A. The basic ones are grades, test scores, and
23 teacher reports.

24 Q. Are there cutoffs to determine who is a 4 and who

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1 conversion chart -- the equivalent number in ACT's.

2 Q. Some take the SAT's, or is it ACT only?

3 A. We take both, you know, which is why we have this
4 conversion chart. And they're, you know, as you know,
5 scaled differently, which makes it harder for people.

6 Q. And the scale changes from time to time as well.

7 A. Yes, and we've got the scale changing.

8 And then 2 academic would be someone who would
9 have scores in the, you know, 680 to high 700's to, you
10 know, one or two in the 800 region. For many members of
11 the staff, a 2 plus academic -- remember I told you the 2
12 pluses are better than 2's -- would be someone who had, you
13 know, a bunch of 800s and straight A scores but no evidence
14 of the next one I'll tell you about, which is the 1
15 academic.

16 Q. And what would that be?

17 A. And a 1 academic is someone who we have good
18 reason to believe, based on, say, awards won, the awards
19 that we're familiar with, which are a fair number of
20 awards, and/or, along with good scores. The scores can be,
21 you know, somewhere in the 700s, excellent grades, and some
22 real academic distinction attested somewhere elsewhere of
23 the kind that we can really trust, might be a 1 academic.
24 And they -- in addition to that, for many of these people

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1 as an overlap, a 1 academic would be someone who our
2 faculty said is truly unusual. So that would be a 1 in the
3 first column, the academic column.

4 Q. Let's talk about the 1 through 4 scale for extra-
5 curricular activities. What are the guidelines the office
6 uses for those?

7 A. So for extracurricular activities, it's pretty
8 rare, I think, to use -- empirically to see a 1
9 extracurricular, but that's someone who would be, you know,
10 the national debate champion. Someone might think that was
11 worthy of calling it a 1 extracurricular.

12 In making judgments in the extracurricular column,
13 we always have some -- or pay some attention to the time
14 that the student reports spending on something. So if a
15 student was a one-shot in winning some -- you know, having
16 some great activity and then only spent two hours a week on
17 it, we might decide that it's not quite as high to rate.
18 And these are subjective, as everything in the folder is
19 kind of a subjective reading of one person, because someone
20 else might not agree with that. So I'm giving you a sense
21 of how I might -- might think of something. Other people
22 might do it a little differently.

23 But, anyway, to answer your question, so a 2 would
24 be someone who had really -- you know, who was the student

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1 20 hours a week taking care of his little sister. Then
2 you're going to give him a kind of credit, which is the way
3 we think about it, saying, you know, we can't expect or we
4 couldn't expect; we're happy to see this other activity.
5 So that's a flag in a way to other readers that that reader
6 who assigned that was going through and thinking of that as
7 a kind of value judgment, but different, and putting it in
8 that folder.

9 Q. And then are there guidelines with respect to the
10 allocation of the 1 through 4 standard in the personal
11 category?

12 A. Yes. They're not terribly helpful. I think
13 "unusual appeal" is I think the phrase we use in their
14 reading instructions. And, you know, again, readers will
15 construe that in different ways. And 2 is -- and I'm not
16 going to get the words for that one right; it's something
17 like "very appealing," you know, a very attractive person
18 to be with and have in your school community and widely
19 respected. And 3 means, you know, just fine. I mean we
20 have better language than this. I don't know what it is.
21 But there are some guidelines for it, yes. 4 has a
22 meaning.

23 Q. 4 has what, I'm sorry?

24 A. 4 is a kind of negative.

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1 Q. I think I need to step back a little bit because
2 what do you mean by a folder being ready to be presented to
3 committee?

4 A. We are now -- the part I'm describing to you now
5 is the reading process. You wanted me to take you through
6 the phases, so I should have labeled this the reading
7 phase.

8 Q. That's fine.

9 A. This is the reading phase.

10 Q. So the reading phase -- I guess I'm not -- I
11 apologize. I'm not quite understanding --

12 A. There's no reason why you should.

13 Q. -- the last answer, which is were you just saying
14 that in some cases, after one reading, a strong file might
15 go directly to the docket head and not get a second reader?

16 A. Yes.

17 Q. Okay.

18 A. In fact, typically, and there's an anachronism of
19 language here, the first reader is the first reader, like
20 it's first and it's first. So those words mean the same
21 thing. The proper first reader title is the same thing as
22 ordinarily the first reader.

23 The person who will read the folder second, being
24 in practice the second reader of the folder, is still

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1 called the third reader, because we used to routinely send
2 any case that was going -- that looked strong to the first
3 reader on to a second reader to make sure that actual
4 second reader thought so too, the second reader on the
5 docket of the same subcommittee, and only then would it go
6 to the chairman of the docket, who is known, of course, as
7 the third reader.

8 We now typically don't put every case through that
9 second reader. But the chairman would be -- if a case is
10 going to be presented in committee, it will be sent to the
11 chair to read.

12 Q. So what determines whether or not a file gets a
13 second reader or not? I mean is it --

14 A. The judgment of the first reader.

15 Q. Okay. If -- if the first reader's overall
16 assessment is 1, do those cases ever get a second reader,
17 or do they generally go straight to the docket head?

18 A. They should go straight to the docket head, unless
19 there was a reason to send it to the second reader, who you
20 knew had a special interest in that kind of mathematical
21 problem that this person says he saw.

22 Q. The general rule in that case would be an overall
23 assessment of 1 can go straight to the third reader --

24 A. Yes.

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1 Q. -- which would be the --

2 A. That would normally be true.

3 Q. And what about an assessment of 2?

4 A. Normally go to the third, to the chairman.

5 Q. Okay. What about an assessment of 3, an overall
6 assessment of 3?

7 A. One of two things would be likely to happen,
8 either to go, by the judgment of the first reader, to the
9 chairman anyway, or it might be not expected to be
10 presented in committee. It could be later, but it might
11 not be one of the cases that you send on believing that it
12 was absolutely going to seem competitive enough.

13 Q. So I guess that maybe leads me to a different
14 question, which is: At some point, is someone's
15 application, essentially the process stops for that
16 application because it's evident that they're unlikely to
17 gain admission?

18 A. It's funny. It actually doesn't stop, because
19 throughout the process, and throughout the committee
20 process, which is the next element of the, next chapter of
21 this, we have something called a docket, which is a
22 physical docket, which actually lists all of the applicants
23 and, in annotated form, which we all know how to read,
24 quite a lot of information about that student.

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1 people are expected to take vacation?

2 A. They would be expected not to take vacation. You
3 never know.

4 Q. But family emergency, sickness, that might excuse
5 someone?

6 A. We are prepared to deal with that, of course, and
7 we'll find a way to work with that.

8 And then immediately after the conclusion of the
9 final subcommittee meeting, we begin the process of full
10 committee to consider the strong cases.

11 Q. So tell me how the full committee meeting works.

12 MR. WOLFSON: Objection.

13 Go ahead.

14 A. Those cases that have been recommended for
15 admission are all discussed as long as -- as well as any
16 other cases that people in that full committee, large
17 committee of perhaps 40 people, want to raise and hear
18 about. And through a series of votes, decisions are made
19 with all of those possible candidates in mind.

20 Q. Let me just step back to the subcommittee meeting.
21 Is there a vote -- is there a majority vote requirement to
22 admit someone to full committee, or is there somewhat of a
23 threshold?

24 A. Yes. Well, majority vote, but if the number is

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1 way -- like if it's everybody, if we loved all of these
2 candidates and there are 500 of them and so on and were
3 early action, the chairman will go back and say, "We're
4 going to have to take some of these people out who are less
5 strong. So let's have a series of votes." And there are
6 various ways to do that. But the typical vehicle is
7 majority vote, and then you may have to reduce the list by
8 majority vote.

9 Q. Is there a list -- is there a percentage or a
10 cutoff of the number of applications that are supposed to
11 come out of subcommittee?

12 A. The only real cutoff number in any of this is for
13 next year 1664, for this year 1662, which is the number of
14 beds in the freshman class. So everything we do is
15 organized with that notion in mind. So at each stage of
16 the -- of the phase -- of the -- of the process, we have in
17 mind a number of people to admit. And in early action, we
18 do not have a fixed number of people to admit, and it's an
19 a nonbinding number, but the dockets have a rough idea of
20 how many people they should be recommending to the full
21 committee.

22 Q. And the idea is it's going to be suitably winnowed
23 at each step until it gets to full committee?

24 A. Yes.

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1 five years?

2 A. It's a higher percentage. It's about, you know,
3 25 percent. I may have this wrong. I'd have to check it,
4 because it has varied from year to year, depending on the
5 size of the pool and the strength of the pool.

6 Q. You think it's in the overall nature of about 25
7 percent?

8 A. Actually, I think it's in the overall nature of
9 something like 20 percent or 18 percent. I don't remember
10 last year, actually.

11 Q. As with the subcommittee, is there a docket, a
12 physical docket, prepared for the full committee meeting?

13 A. Yes.

14 Q. Does it contain all the same information?

15 A. Yes.

16 Q. Okay. And how are -- how are the candidates
17 presented at the full committee meetings?

18 A. In a way that's very similar to the presentation
19 at subcommittee. We use screens that you can see things,
20 and you can also do this on your computer now. We -- the
21 area person who's in charge of presenting these cases
22 determines, you know, which ones to talk about. Other
23 people can raise questions. And the chairman of the whole
24 thing, Dean Fitzsimmons, who runs that process of the

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1 A. If it was -- seemed to be very underrepresented
2 compared to, let's say, recent years and so on, that would
3 be mentioned or given some attention.

4 Q. What about overrepresentation?

5 A. Overrepresentation is in our system not a notion.
6 It's underrepresentation.

7 Q. What is -- what is the definition of
8 underrepresentation?

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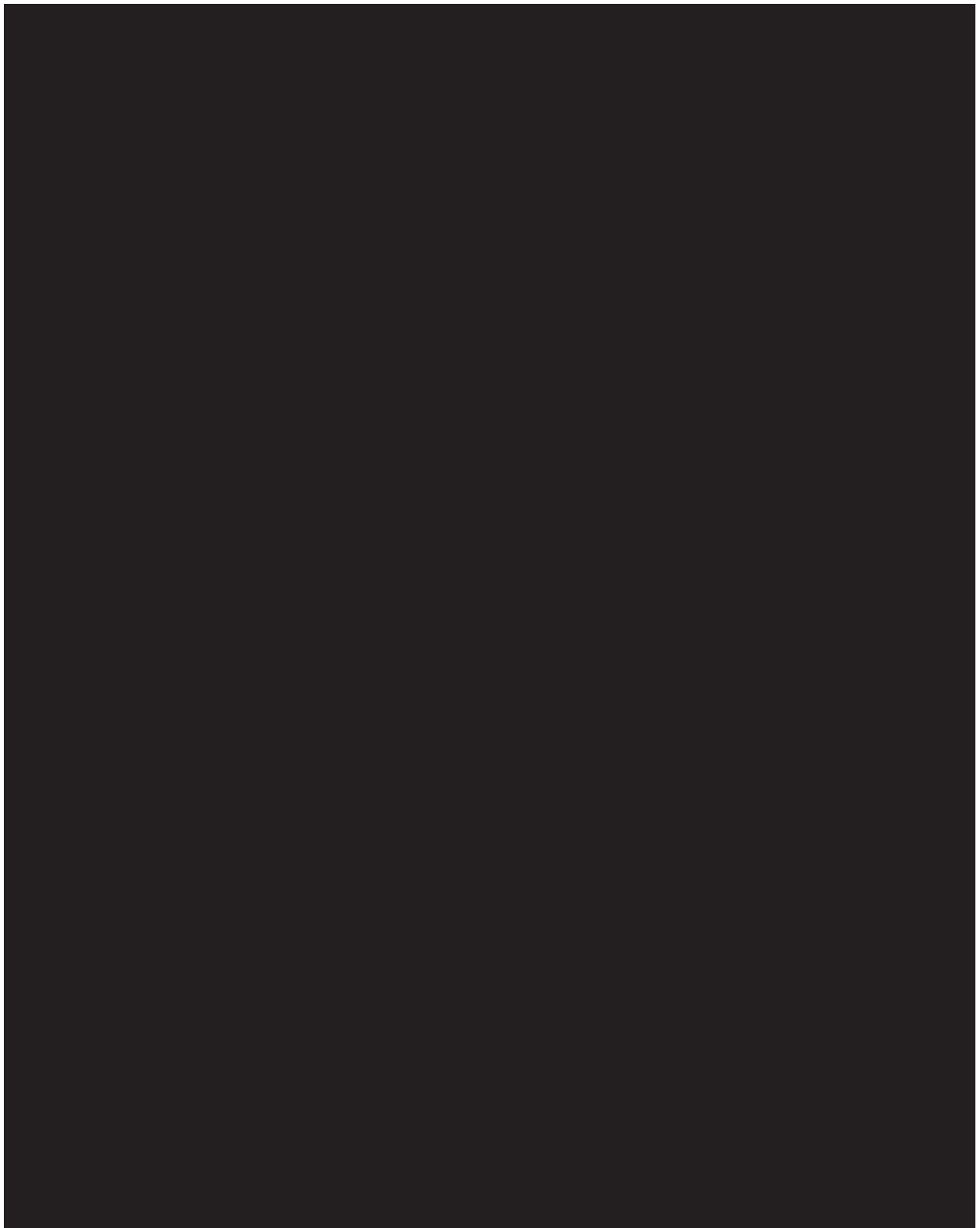
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1 Another example would be field of concentration.
2 If there are, you know, no engineers in the class and we
3 are used to having early action more engineers than that,
4 we would say the same kind of thing, which is "If there are
5 some strong ones, please let's look at those again and see
6 if they look any better or not."

7 Q. The information available to the dean or director
8 regarding the race or ethnicity of the various pools at
9 this point in the process, is that made available in the
10 form of a document?

11 A. Yes.

12 Q. Okay. And who prepares that document?

13 A. The database administrator, Elizabeth Yong.

14 Q. And that would be given to you and to Mr.
15 Fitzsimmons?

16 A. Yes.

17 Q. How is that typically given to you?

18 A. In a document.

19 Q. It would be an email or physical copy or --

20 A. It's given by, you know, security-protected
21 document, and I -- Elizabeth often hands me a printout for
22 the committee.

23 Q. By security-protected document, that means it
24 would be in electronic format?

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1 A. Yes.

2 Q. Once you have basically completed the full
3 committee process, and presumably that has included
4 settling on a number that is acceptable --

5 A. Right.

6 Q. -- in this given year for early --

7 A. Right.

8 Q. -- early action decision period?

9 A. Right.

10 MR. WOLFSON: Wait until he finishes
11 before you --

12 Q. It's very hard. I know. I talk slow, and we all
13 see where I'm going.

14 But the -- is there anything else done with
15 respect to the early action process by the -- by the
16 committee at that point other than notify those who have
17 been accepted for early action?

18 A. Yes, there is.

19 Q. What's done at that point?

20 A. The next step is to make lists of those candidates
21 who are about to be admitted who have submitted financial
22 aid applications and to make sure that, to the extent
23 possible, an -- a financial aid package, as it is called,
24 offer, with the various components, is constructed so that

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1 Q. Do you remember when that occurred?

2 A. No, not recently, it has not occurred, to my
3 knowledge.

4 Q. Can you describe how race is factored into the
5 admissions process?

6 MR. WOLFSON: Objection.

7 A. Could you be a little more specific about what you
8 would like to know?

9 Q. Well, we've talked a little bit about it, but I
10 guess I'm just trying to get from -- from sort of the
11 initial kind of highest-level perspective what -- to what
12 extent does Harvard consider race when it's making its
13 admissions decisions?

14 A. The most important thing to say is that when an
15 applicant has applied, each applicant is really considered
16 as an individual, including -- whose candidacy will always
17 include, generally include, many factors, family
18 background, which will include whatever we know of race,
19 whatever else we know about family circumstances and
20 education, whatever we can know about the nature of the
21 school and the kind of community the student grew up in.
22 Those context features, those features of the student's
23 setting are always important to us in imagining how well
24 he's achieved in the circumstances that he started with to

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1 us as a candidate. And race or ethnicity is often -- I
2 mean is certainly part of our comprehension of that
3 candidate.

4 Q. Besides the comprehension of an individual
5 candidate, to what extent, if any, does Harvard desire to
6 ensure that the overall makeup of a particular class
7 reflects a particular racial composition?

8 A. We are not very interested -- we are not
9 interested in racial composition per se. We are very
10 interested in, for each class, assembling a diverse group
11 of people along various ways you could measure that,
12 ethnicity being one, but also geography and -- things we've
13 talked about, geography, field of concentration. We want
14 to make sure that in the final enrolling class that there's
15 a mix of -- a mix of people and a mix of experiences and,
16 we like to think, a mix of perspectives.

17 Q. Is race a more or less important factor with
18 respect to diversity than geographic distribution?

19 A. You know, I couldn't make a general statement
20 about that. It really depends on the case. In some -- for
21 some candidate, he may be a very rare example of a certain
22 kind of Alaskan candidate. That context may be a feature
23 of the case that the area person will keep emphasizing and
24 the committee might keep responding to or not. In another

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1 case, it may be ethnicity, especially if the ethnicity or
2 the experience of ethnicity was unusual and salient in
3 developing the person --

4 Q. So I understand that --

5 MR. WOLFSON: Did you finish?

6 A. Or not was the last thing I was going to say.

7 MR. WOLFSON: Okay.

8 Q. Thank you. I'm sorry.

9 So I understand that to be an analysis as to the
10 relative importance with respect to an individual decision,
11 but with respect to being concerned that you have a diverse
12 group as a whole, is ethnicity a more or less important
13 factor on a group basis than geographic diversity?

14 A. I don't think one is more important than the other
15 to us in the college.

16 Q. Is -- is the purpose of taking into account race
17 at Harvard to ensure a diverse student body?

18 MR. WOLFSON: Objection.

19 Go ahead.

20 A. That's one of the purposes.

21 Q. And is -- did you just testify that diversity
22 extends beyond racial diversity?

23 A. Yes. We think so.

24 Q. But racial diversity is included in one of the --

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1 Q. What about the concept of achieving a desired
2 number of racially diverse students?

3 A. The concept of it is certainly familiar to me and
4 to my staff. It's not, to my knowledge, anybody's specific
5 goal, a critical mass per se.

6 Q. Does the admissions office have any predetermined
7 idea as to what would be sufficient to create a racially
8 diverse campus?

9 A. You know, we are guided, I think, in our thinking
10 about a sufficiently diverse class as it shapes up, as I
11 said, by previous years. If there's a dramatic change, not
12 corresponding to a dramatic change in the number of
13 applicants, we would want to -- we would raise the question
14 of whether we were giving good, careful consideration to
15 those candidates from that group that seemed to be doing
16 less well this year than they were last year. It might not
17 change anything. But we're not ever -- and I think we're
18 clear with our staff about this, we're not ever looking for
19 a particular number or percentage.

20 Q. Other than attempting to ensure that there's not a
21 large disparity from a prior year's experience, has the
22 admissions office attempted to increase the relative
23 enrollment of particular ethnic groups over a period of
24 time?

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1 Q. And have you heard the opinion expressed there's
2 not enough Asian-Americans on campus?

3 A. Yes.

4 Q. And by anyone in the admissions office?

5 A. It's often discussed in the admissions office that
6 we want to make sure that we can do better attracting, you
7 know, Vietnamese students or native Hawaiian students or
8 whatever. That's not -- I don't mean often, but it
9 certainly happens from time to time.

10 Q. What about Asian-American groups as a whole under
11 the --

12 A. I think there's been some discussion of, you know,
13 are we doing well with Asian-Americans, are we attracting
14 good candidates. I know our students have written about
15 that. We have -- I told you that we had student
16 recruiters, and they recruit these various ethnic groups,
17 including, of course, American -- Asian-Americans, and
18 those particularly were attached to representing certain
19 groups I think always feel underrepresented.

20 Q. Is the -- is the relative level of diversity that
21 Harvard wants to achieve analyzed over a four-year period
22 as well as year to year by your office?

23 A. We don't analyze it, to my knowledge, as a group
24 of four years together. Our general view of things is year

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1 by year, cohort by cohort.

2 Q. And your testimony is that Harvard does not have
3 any specific category for individual racial groups on
4 campus? Specific -- sorry. Your testimony is that it
5 doesn't have any specific target or minimum level for
6 racial groups on campus?

7 A. We do not.

8 Q. And it does not have a minimum level for
9 individual racial groups on campus?

10 A. No. Not a specific number.

11 Q. Are you able to testify to any degree of
12 specificity with what is a -- what is an inadequate
13 departure from the prior years with respect to any racial
14 group?

15 A. An inadequate departure or inadequate number
16 compared --

17 Q. Inadequate number compared to the prior years.

18 A. I can't testify to that. I could not be specific.

19 Q. And how does Harvard measure whether or not it has
20 achieved its interest in sufficient racial diversity in a
21 given class?

22 MR. WOLFSON: Objection.

23 Go ahead.

24 A. You know, I don't believe I've ever heard -- that

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1 COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

2
3 I, JAMES A. SCALLY, RMR, CRR, a Certified
4 Shorthand Reporter and Notary Public duly commissioned and
5 qualified in and for the Commonwealth of Massachusetts, do
6 hereby certify that there came before me on the 18th day of
7 June, 2015, at 9:00 a.m., the person hereinbefore named,
8 MARLYN ELIZABETH McGRATH, who provided satisfactory
9 evidence of identification as prescribed by Executive Order
10 455 (03-13) issued by the Governor of the Commonwealth of
11 Massachusetts, was by me duly sworn to testify to the truth
12 and nothing but the truth of her knowledge concerning the
13 matters in controversy in this cause; that she was
14 thereupon examined upon her oath, and her examination
15 reduced to typewriting under my direction; and that this is
16 a true record of the testimony given by the witness to the
17 best of my ability.

18 I further certify that I am neither
19 attorney or counsel for, nor related to or employed by, any
20 of the parties to the action in which this deposition is
21 taken, and further, that I am not a relative or employee of
22 any attorney or counsel employed by the parties hereto or
23 financially interested in the action.
24

My Commission Expires: April 8, 2022

James A. Scally, RMR, CRR
CSR/Notary Public